

**Nov 02, 2020**

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

JAMES DEAN CLOUD (01) and  
DONOVAN QUINN CARTER  
CLOUD (02),

Defendants.

No. 1:19-cr-02032-SMJ-1  
1:19-cr-02032-SMJ-2

**ORDER MEMORIALIZING ORAL  
RULINGS AT OCTOBER 27, 2020  
STATUS CONFERENCE**

On October 27, 2020, the Court held a status conference on the above-captioned matter. The Court addressed two main issues: (1) discovery concerns, including late disclosure and redactions, and (2) grand injury proceedings, including potential superseding indictments. It also discussed whether the Government intends to seek the death penalty in this case. This Order memorializes the oral rulings the Court made at the hearing.

**DISCOVERY ISSUES**

Counsel for Defendants informed the Court that on October 15, 2020—a little over two weeks after the Court conducted a two-day hearing on the admissibility of several eyewitnesses' identifications—the Government disclosed discovery on yet

1 another eyewitness: “Witness 26.” The newly disclosed discovery indicates that FBI  
2 agents interviewed Witness 26 on August 29, 2019, nearly 14 months before the  
3 Government disclosed it to the defense. The Court found that the Government had  
4 wasted time, money, and resources given its late disclosure. The Court thus ordered  
5 defense counsel to keep an ongoing tabulation of costs related to Witness 26,  
6 including attorney, investigator, expert, and staff hours expended. The Court  
7 determined that if it conducts a hearing on the matter, it will impose sanctions  
8 requiring the Government to reimburse those costs.

9 As for redactions, Defendants made an oral motion for reconsideration of the  
10 Court’s prior Order on redactions. *See generally* ECF No. 157 (denying Defendants’  
11 request for unredacted discovery); Tr. (Oct. 27, 2020). Defendants argue  
12 withholding witness names hampers defense counsels’ ability to effectively  
13 represent them, and it also undermines their confidence in a fair trial. The Court  
14 determined that it must balance the constitutional right to present a defense against  
15 the vital concern of witness safety. The Court granted Defendants’ motion for  
16 unredacted discovery, with the caveat that defense counsel does not provide,  
17 discuss, or otherwise disclose any of the witnesses’ identities to Defendants or  
18 others who are not members of the defense team, or provide, discuss, or disclose  
19 any unredacted personal or contact information of witnesses to Defendants or others  
20 who are not members of a defense team. The Court ordered the parties to confer and

1 provide the Court with an agreed proposed protection order. The Court advised, if  
2 the parties cannot agree, to indicate that disagreement, and the Court will resolve  
3 any remaining redaction related issues.

#### 4 **GRAND JURY PROCEEDINGS**

5 At the hearing, the Government also advised that it intends to seek a third  
6 superseding indictment. Tr. (Oct. 27, 2020). It emphasized, however, that it does not  
7 intend to seek the death penalty at this time. *Id.* The Court discussed the next  
8 available grand jury proceedings with the Government. Given the limitations caused  
9 by the COVID-19 pandemic, the Court set a tentative deadline for seeking a third  
10 superseding indictment, stressing that deadline is contingent on grand jury  
11 proceedings actually taking place.

12 The Court set a new status conference date to follow up on these issues.

#### 13 **IT IS HEREBY ORDERED:**

14 **1.** Defense counsel for Defendants James Cloud (01) and Donovan Cloud  
15 (02) **shall** keep an ongoing tabulation of all costs related to Witness  
16 26.

17 **2.** Defendants' oral motion for unredacted discovery is **GRANTED**,  
18 subject to the limitations provided in the forthcoming protective order.

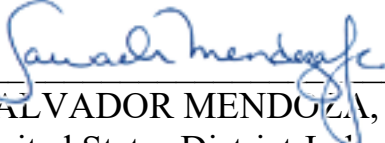
19 **A.** The parties **shall file** their joint proposed protective order **by no**  
20 **later than November 6, 2020.**

1           **3.**     The Government **shall** seek a third superseding indictment at the next  
2           available grand jury session.

3           **4.**     The Court will conduct a **status conference** hearing on **November 24,**  
4           **2020 at 1:30 P.M.** in Yakima courtroom 324.

5           **IT IS SO ORDERED.** The Clerk's Office is directed to enter this Order and  
6     provide copies to all counsel.

7           **DATED** this 2<sup>nd</sup> day of November 2020.

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          SALVADOR MENDOZA, JR.  
          United States District Judge